IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-6000

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SUPREME COURT, U.S.

RUSSELL BENJAMIN HUGHES, JR.,

Petitioner,

vs.

CHARLES J. ROWE, et al.,

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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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Respondents respectfully request that this Court deny the petition for writ of certiorari, seeking review of the decision of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

Respondents believe that the unreported opinions of the United States Court of Appeals for the Seventh Circuit and the United States District Court for the Northern District of Illinois have been satisfactorily reproduced and appended to petitioner's application for writ of certiorari. (Appendix at 2-8, 12-15, 16-17).

JURISDICTION

Petitioner has fully satisfied the jurisdictional requirements. (Petition at 2).

QUESTIONS PRESENTED FOR REVIEW

1. Is it an abuse of discretion for a federal district court to award attorney's fees, pursuant to 42 U.S.C. §1988, to a state defendant who prevails in a pro se prisoner civil rights action.

2. Does the fact that a pro se prisoner's civil rights complaint failed create a presumption that the relaxed pleading standard of Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594 (1972) has not been honored.

STATUTE INVOLVED

42 U.S.C. §1988:

> In any action or proceeding to enforce a provision of sections 1981, 1982, 1983 ... of this title ... the court, in its discretion, may allow the prevailing party ... a reasonable attorney's fee as part of the costs.

STATEMENT OF THE CASE

On September 20, 1977, petitioner was charged with being intoxicated. Petitioner admitted to drinking homemade liquor. He was then placed in segregation until his disciplinary hearing on September 22, 1977.

The disciplinary hearing was conducted before the Institutional Adjustment Committee. The committee was composed of three prison employees, two of whom are respondents in this cause. It was never alleged that the members of this committee ever witnessed, participated in or investigated the charges against the petitioner. Since no witnesses were requested none were called to testify. Petitioner admitted the charges against him and was found guilty. It was then recommended and approved that the petitioner be confined in segregation for a period of ten days, that 30 days statutory good time credits be revoked, and that he be demoted in grade status. Petitioner received a copy of the Adjustment Committee Summary, which indicated not only the fact that petitioner admitted his guilt, but also the basis upon which the committee's actions were founded. "[T]hreat to safety and security" was cited as the reason for the committee's actions.

On December 12, 1977, after unsuccessfully appealing the committee's actions through the institution's internal grievance procedures, petitioner filed his pro se civil rights

complaint in the United States District Court for the Northern District of Illinois. The action was brought pursuant to 42 U.S.C. §1983. The court's jurisdiction was apparently invoked pursuant to 28 U.S.C. §1343.

Petitioner's complaint alleged, inter alia, that he was denied due process and equal protection of the law at his disciplinary hearing. Further, petitioner charged that respondent Rowe, who then was the Director of the Illinois Department of Corrections, was responsible for the alleged civil rights violations.[1]

On February 6, 1978, petitioner amended his pro se complaint.

On June 28, 1978, the district court granted respondents' motion to dismiss. (Appendix at 1-8). The court, after considering each of petitioner's allegations, concluded that the entire complaint failed to state cognizable claims under 42 U.S.C. §1983.

Petitioner then filed a motion to reconsider the dismissal. On August 10, 1978, the court denied the motion to reconsider

Respondent Rowe then filed a motion for attorney's fees pursuant to 42 U.S.C. §1988, which was allowed on October 18, 1978. Attorney's fees in the amount of $400.00 were taxed against the plaintiff.[2] In so doing, the court found that the petitioner had not complied or otherwise responded to the court's order to show cause why attorney's fees

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1. It should be noted that respondent Rowe was in no way involved in petitioner's disciplinary proceeding.

2. Interestingly, it has not been suggested, nor argued that the amount of attorney's fees awarded was unreasonable.

should not be taxed against him. Thereafter, petitioner filed a motion to reconsider the award of attorney's fees. That motion was denied by the court on December 5, 1978, when it found, additionally, that petitioner's suit was meritless.

On appeal to the United States Court of Appeals for the Seventh Circuit, the decision of the district court was affirmed. (Appendix at 12-15). The court of appeals found that petitioner suffered no violations of due process or denial of equal protection of the law. In affirming the award of attorney's fees, the court found no foundation for the claims made in petitioner's complaint. Thus, the court concluded, the district court had not abused its discretion in awarding attorney's fees to respondent Rowe.

Petitioner's Petition for Rehearing and Suggestion for Rehearing En Banc was denied on October 29, 1979.

REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

INTRODUCTION

Petitioner seeks a Writ of Certiorari in this cause so that this Court might review the decision of the United States Court of Appeals for the Seventh Circuit, which affirmed the decision of the United States District Court for the Northern District of Illinois dismissing his pro se civil rights action and awarding attorney's fees to one of the prevailing state defendants.

Petitioner takes particular exception to the award of attorney's fees. He argues that that action by the district court penalized him for filing his lawsuit. Moreover, he continues, such awards to prevailing state defendants set a disturbing precedent, in that such awards would effectively discourage pro se prisoner litigants from filing civil rights lawsuits. Consequently, he concludes that such litigants would be unable to vindicate violations of their civil rights. He asks this Court to either, 1) exempt pro se prisoner litigants from the 1976 Civil Rights Attorney's Fees Act (42 U.S.C. §1988) or, 2) adopt a more stringent standard for determining when such awards may be granted to prevailing state defendants.

Secondly, petitioner urges review of the dismissal of his pro se civil rights complaint. He argues that the liberal pleading standard of Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594 (1972) was not applied in his case. Thus, he presents the Court this question: does the dismissal of a pro se prisoner civil rights complaint give rise to the presumption that the liberal construction rule of Haines v. Kerner, supra has not been honored.

I.

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY AWARDING ATTORNEY'S FEES TO THE PREVAILING STATE DEFENDANT BECAUSE PETITIONER'S COMPLAINT WAS WHOLLY WITHOUT LEGAL OR FACTUAL MERIT.

The Civil Rights Attorney's Fees Act of 1976 provides:

> In any action or proceeding to enforce a provision of sections 1981, 1982, 1983 ... of this title ... the court, in its discretion, may allow the prevailing party ... a reasonable attorney's fee as part of the costs. 42 U.S.C. §1988.

This Court has not directly established a standard by which federal courts are to determine the appropriateness of awarding attorney's fees pursuant to this statute. However, in Christianburg Garment Co. v. E.E.O.C., 434 U.S. 412, 98 S.Ct. 694 (1978) (hereinafter Christianburg), the Court established such a standard for an attorney's fees statute that is similar, if not identical to the foregoing statute.[3] Indeed, the Christianburg standard along with its supporting rationale can and does have strong application to the present case. See e.g., Lopez v. Aransas County Independent School District, 570 F.2d 541 (5th Cir. 1978); Griffin v. Collins, 443 F.Supp. 1010 (S.D. Ga. 1978).

In Christianburg, the court held that a prevailing defendant in a Title VII case may be awarded attorney's fees. Further, the court held that such an award was discretionary only upon a finding that the "plaintiff's action was frivolous, unreasonable or without foundation, even though not brought in subjective bad faith." Christianburg, supra, at 700. In

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[3] Christianburg dealt with attorney's fees awarded pursuant to 42 U.S.C. §2000e-5(k) (1964). That statute is virtually identical to the statute involved in this case.

reaching this result, the court considered the term "meritless" as used by two federal Courts of Appeal. While the court generally approved the term, it qualified its definition so as to bring it into harmony with its ultimate holding:

> To the extent that abstract words can deal with concrete cases, we think that the concept embodied in the language adopted by these two Courts of Appeal is correct. We would qualify their words only by pointing out that the term "meritless" is to be understood as meaning groundless or without foundation, rather than simply that the plaintiff has ultimately lost his case.... Christianburg, supra, at 700.

From the foregoing, it follows that if a district court is presented with a motion for attorney's fees, and that motion cites Christianburg as authority, the court would not be in error if it allowed the motion upon a finding that the underlying lawsuit was "meritless." Its use would be understood to mean "groundless or without foundation." This is precisely what happened in petitioner's case. Thus, the district court applied the correct standard in awarding attorney's fees to respondent Rowe. The court did not abuse its discretion. This conclusion is further underscored by the decision of the Court of Appeals in this case:

> In applying this [Christianburg] criteria to the instant case, we are unable to conclude that the court abused its discretion in awarding attorney's fees. Although reluctant to award attorney's fees against pro se plaintiffs, in cases such as the instant one, where no foundation for the claim has been shown, we feel compelled under Christianburg to uphold the decision of the district court. Appendix at 15 (emphasis added).

Petitioner's contention that the court's below applied an improper standard in awarding attorney's fees to respondent Rowe is unfounded. See generally Goff v. Texas Instruments, Inc., 429 F.Supp. 973, 975-976 (N.D. Tex. 1977). Indeed, the Christianburg standard for determining the appropriateness of

attorney's fees for prevailing defendants was scrupulously honored in this case. The petition for Writ of Certiorari should be denied.

Petitioner insists, however, that his complaint had factual merit and, therefore, attorney's fees should not have been taxed against him. Respondents disagree.

Petitioner's claims were factually baseless. They were not supported by the evidence. Unless further analysis proves this conclusion to be ill-founded, the granting of a Writ of Certiorari in this aspect of the case would only enable this Court to pass judgment on a factual dispute.

Looking at the facts, one finds that it is essentially a case in which a prison resident was dissatisfied with the treatment he received at a disciplinary hearing. Petitioner was charged with intoxication and admitted his guilt. The disciplinary action that was taken was clearly within the scope of the disciplinary regulations. It is clear that petitioner's case lacked foundation from its inception. This was certainly true as to respondent Rowe.

Respondent Rowe was the Director of the Illinois Department of Corrections. As such, he has no relation to the day to day operation of the institutions. It is very well established that the doctrine of respondeat superior is inapplicable to actions brought pursuant to 42 U.S.C. §1983. Monell v. New York City Department of Social Services, 436 U.S. 658, 98 S.Ct. 2018 (1978). Petitioner was apprised of this fact and, yet, continued to maintain the action against Rowe. In response to Rowe's motion to dismiss petitioner made vain attempts to amend his complaint to include allegations of Rowe's personal knowledge and personal involvement. The result was more frivolity than originally existed. Thus, respondent Rowe was required to remain in the action even though petitioner could prove no set

of facts against him, which would have given rise to a valid claim. Conley v. Gibson, 355 U.S. 41, 92 S.Ct. 594 (1957). This result would have obtained regardless of whether a strict pleading standard was employed or the relaxed standard of construing the pleadings of pro se litigants. Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594 (1972). As to respondent Rowe the complaint was indeed meritless.

Petitioner's contention that the district court, as well as the Court of Appeals, failed to employ the liberal construction rule of Haines is equally without merit. Petitioner makes much of the fact that both courts expended much time in detailing the frivolousness of his lawsuit. To understand why one court dismisses a complaint with one paragraph and another with an exposition of the law takes one into that never-never land of uncertain speculation. Suffice it to say that petitioner was not held to any stricter standard than is required by Haines. To be sure, the record in this case belies any contention that petitioner was held to a stricter standard. He was afforded ample opportunity to state and perfect his claim. Nevertheless, he failed. He filed an amended complaint and, during the pendency of his action, he also filed a variety of documents - many of which were totally unnecessary to the action.

To adopt petitioner's position that the dismissal of pro se prisoner actions automatically gives rise to the presumption that the liberal construction rule of Haines was not followed is totally unreasonable. Further, such a position would impose an even greater burden on the district courts - a burden they can ill-afford. While it is important as a matter of social and public policy to keep the federal courts open to the legitimate claims of all citizens, it is equally important, if not more so, to weed out the frivolous and insubstantial cases. See Valley v. Maule, 297 F.Supp. 958 (D. Conn. 1968) quoted with approval in Kauffman v. Moss, 420 F.2d 1270, 1276

n.15 (3rd Cir. 1970), cert. denied, 400 U.S. 846 (1970).

Here, petitioner is simply disgruntled about having his complaint dismissed. He reasons that in all that he submitted to the court there must have been a valid claim in there somewhere. The fact is there was not. Moreover, he failed to demonstrate that the district court gave him any less consideration than the consideration required by Haines. The petition for Writ of Certiorari must be denied.

Finally, petitioner raises certain questions that are peripherally related to the foregoing questions. He argues first, that attorney's fees were taxed against him to penalize him for having filed the lawsuit against respondent Rowe. Here, again, the Christianburg is dispositive of the argument.

There, in reviewing the sparse legislative history of that attorney's fees statute, the Court found the Congressional intent. It found that the fee provision was included to "make it easier for a plaintiff of limited means to bring a meritorious suit." Moreover, during the Senate floor discussions, several Senators explained that allowing awards to prevailing defendants would serve "to deter the bringing of lawsuits without foundation," "to discourage frivolous suits," and "to diminish the likelihood of unjustified suits being brought." Christianburg, supra at 699. This Court then concluded that Congress wanted to clear the way for suits to be brought under the Civil Rights Act. However, it also wanted to protect defendants from burdensome litigation having no legal or factual basis. Christianburg, supra at 700. From this it can be concluded that the attorney's fees statute was intended to deter cases such as petitioner's. And while he may believe it to be a retaliatory measure, it was so designed by Congress.

Petitoner also argues that the award is improper because the recipient is a state official. Suffice it to say

that state officials were not exempted by Congress. Nor did Congress intend to exempt any particular group from the scope of the statute.

In all, petitioner's peripheral arguments must be rejected as well.

CONCLUSION

For the foregoing reasons, respondents pray that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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